IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 527 OF 2005

IN

SUM. SUIT NO. 657 OF 2004

Lila R. Parikh & Ors. .. Plaintiffs.

vs.

Bharat Pranjivan Valia .. Defendant.

Ms. Kavita Shah i/by A.G. Shah
for the plaintiffs.
Mr. Tushar Bhavsar i/by Shah & Sanghvi
for defendant.

CORAM : S.U.KAMDAR, J.

DATE : 9th January,2006.

P.C.

. The present suit is filed on a promissory note dated 5.9.1997 for a sum of Rs. 1 lac. It is the case of the plaintiff that on the said loan interest has been paid right upto 17.3.2001. Demand notice was issued on 21.9.2001. There was no reply and, therefore, the present suit is filed. The defendants has filed a reply and raised two defences. Firstly, that the suit is barred by law of limitation and secondly it is a money lending

transaction. In so far as the defence of limitation is concerned, it appears that the payment of interest is made right upto 173.2001 and suit is filed on 26.2.2004. By virtue of the part payment, the suit is in time. In so far as the money lending transaction is concerned, the learned counsel for the defendant pointed out in his reply to the present suit he has contended that many people have been given loan and, therefore, the plaintiff is a money lender. Prima facie I am not satisfied on this defence. It is the only transaction as far as the defendant is concerned with the plaintiff and the plaintiff has claimed that it is a friendly loan. In any event, no issue requiring trial has been raised. However, with a view to give the defendants an opportunity to defend the suit, a conditional leave is granted to the defendant to defend the suit. The defendant to deposit a sum of Rs. 1,40,000/- in this court within four weeks from today as a condition to defend the suit. If deposit is not made as aforesaid the plaintiff will be entitled to the decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.